Imoway Corp (M) Sdn Bhd v Lim Ai Kiong

HIGH COURT (SIBU) — ORIGINATING SUMMONS NO 24–39 OF 2010
YEW JEN KIE J
15 NOVEMBER 2010

Land Law — Restraint on dealings — Caveat — Removal of — Whether caveatable interest present — Whether plaintiff had locus standi to initiate proceedings for removal of caveats — Sarawak Land Code (Cap 81) ss 174(1) & 177(1)

In January 1993, the defendant, his late mother and his siblings had entered into an agreement with the plaintiff as the developer ('the development agreement') to develop their joint lands including a parcel of land described as Lot 1223 situated in the Sarikei Land District ('the land') into a housing/commercial estate. The defendant's uncle and his wife were both the directors and shareholders of the plaintiff company. In addition to the development agreement the defendant had granted the plaintiff a power of attorney, which empowered it to do every other act which may be deemed 'necessary or proper in relation to the premises'. The plaintiff had completed phases 1, 2 and 3 of the development that was to be carried out in seven phases. Thereafter, the defendant had entered two caveats on the land, namely, the caveat lodged on 20 April 2007 and another lodged on 14 January 2010. By reason of these caveats the plaintiff was unable to obtain loan financing in respect of phase 4 of the development and to commence work thereon. The plaintiff thus commenced the present applications for the removal of the two caveats lodged by the defendant. The plaintiff, who commenced these actions as the donee of the power of attorney granted by the defendant, contended that the defendant did not have a caveatable interest on the land and that the caveats lodged were an abuse of the process because the purpose of the caveats was to frustrate the development and to pressure the plaintiff to accede to the requests of the defendant and his siblings. The plaintiff submitted that upon the conjunctive construction of the power of attorney and the development agreement, it was clear that the contractual relationship between the plaintiff and defendant was that of a joint venture agreement whereby the plaintiff developed the defendant's lands on barter basis. The defendant contended that if the plaintiff was of the view that the defendant had wrongfully terminated the development agreement, then it ought to have pursued an action for loss and damage and not to apply to force the defendant to remove the caveats. The defendant further submitted that the plaintiff had no locus standi to make the present application under s 177(1) of the Sarawak Land Code ('SLC'). The two issues to be considered in this case were whether the power of attorney and

development agreement gave the plaintiff the locus standi to initiate the instant proceedings for the removal of the caveats and whether the defendant had a caveatable interest in the land.

Held, granting an order for the removal of the caveats with costs:

(1) Upon reading the development agreement and the registered power of attorney together it was clear that the defendant had given the plaintiff a wide range of powers to deal with the land, which included the power to do every act deemed 'necessary or proper in relation to the premises'. As such, the plaintiff was the person who had a registered interest in the land for the purposes of s 177 of the SLC. Thus, the plaintiff had the legal standing to bring the present applications under s 177(1) of the SLC to remove the caveats (see paras 29–34).

(2) The caveats filed by the defendant in the present case were based on his proprietary rights and contractual rights under the development agreement. It is settled law that a registered proprietor of land cannot lodge caveats on his own land. Thus, as the defendant had failed to establish a set of circumstances above and beyond his status as a registered proprietor it was held that the defendant was not entitled to caveat his own interest (see paras 36 & 40).

(3) The defendant and his siblings were at all material times the registered proprietors of a certain proportion of the land but they had lodged the caveats in respect of the whole of the land without expressly stating that it was to protect their limited interest in the land only. The defendant had thus failed to comply with s 174(1) of the SLC and the caveats could not remain in the register (see paras 42–47).

[Bahasa Malaysia summary

Pada Januari 1993, defendan, mendiang ibunya dan adik-beradiknya telah memasuki perjanjian dengan plaintif sebagai pemaju ('perjanjian pembangunan') untuk membangunkan tanah-tanah bercantum mereka termasuk sebidang tanah yang dikenali sebagai Lot 1223 yang terletak di Daerah Tanah Sarikei ('tanah tersebut') kepada estet perumahan/perdagangan. Pak cik defendan serta isterinya kedua-duanya adalah pengarah-pengarah dan pemegang-pemegang saham syarikat plaintif. Sebagai tambahan kepada perjanjian pembangunan tersebut defendan telah memberikan kepada plaintif surat kuasa wakil, yang mana memberikan kuasa kepadanya untuk membuat setiap tindakan yang dianggap 'necessary or proper in relation to the premises'. Plaintif telah menyiapkan fasa 1, 2 dan 3 pembangunan tersebut yang akan dilaksanakan dalam tujuh peringkat. Defendan kemudiannya memasuki dua kaveat ke atas tanah tersebut, iaitu, kaveat yang dimasukkan pada 20 April 2007 dan satu lagi pada 14 Januari 2010. Atas sebab kaveat-kaveat ini plaintif tidak dapat memperolehi pinjaman kewangan berkaitan fasa 4 pembangunan

tersebut dan untuk memulakan kerja-kerja di atasnya. Plaintif oleh itu memulakan permohonan-permohonan ini untuk pemotongan kedua-dua kaveat yang dimasukkan oleh defendan. Plaintif yang memulakan tindakan-tindakan ini sebagai penerima kuasa wakil yang diberikan oleh defendan, berhujah bahawa defendan tidak mempunyai kepentingan kaveat atas tanah tersebut dan kaveat-kaveat yang dimasukkan adalah salahguna proses kerana tujuan kaveat-kaveat tersebut adalah untuk menghalang pembangunan dan untuk menekan plaintif untuk menyetujui kepada permintaan-permintaan defendan dan adik-beradiknya. Plaintif berhujah bahawa selepas pembentukan penghubung surat kuasa wakil dan perjanjian pembangunan, ia adalah jelas bahawa perhubungan kontrak di antara plaintif dan defendan adalah perjanjian usaha sama di mana plaintif membangunkan tanah-tanah defendan atas asas perdagangan dengan cara tukar-menukar barang. Defendan berhujah bahawa jika plaintif berpandangan bahawa defendan telah secara salah menamatkan perjanjian pembangunan, ia sepatutnya mengejar tindakan untuk kerugian dan ganti rugi dan bukan untuk memohon untuk memaksa defendan untuk memotong kaveat-kaveat tersebut. Defendan selanjutnya berhujah bahawa plaintif tidak mempunyai locus standi untuk membuat permohonan ini di bawah s 177(1) Kanun Tanah Sarawak ('KTS'). Kedua-dua isu untuk dipertimbangkan di dalam kes ini adalah sama ada surat kuasa wakil dan perjanjian pembangunan memberi plaintif locus standi untuk memulakan prosiding ini untuk pemotongan kaveat-kaveat dan sama ada defendan mempunyai kepentingan kaveat di dalam tanah tersebut.

Diputuskan, memberikan perintah untuk pemotongan kaveat-kaveat dengan kos:

(1) Setelah membaca perjanjian pembangunan dan surat kuasa wakil yang berdaftar bersama ia adalah jelas bahawa defendan telah memberi plaintif bidang kuasa luas untuk berurusan dengan tanah tersebut, yang mana termasuk kuasa untuk membuat setiap tindakan yang dianggap 'necessary or proper in relation to the premises'. Oleh itu, plaintif adalah seseorang yang mempunyai kepentingan berdaftar di dalam tanah tersebut untuk s 177 KTS. Oleh itu, plaintif mempunyai hak undang-undang untuk memfailkan permohonan-permohonan ini di bawah s 177(1) KTS untuk memotong kaveat-kaveat tersebut (lihat perenggan 29–34).

(2) Kaveat-kaveat yang difailkan oleh defendan di dalam kes ini adalah berdasarkan atas hak sebagai tuan punya dan hak-hak kontrak di bawah perjanjian pembangunan tersebut. Ia adalah undang-undang nyata bahawa pemilik berdaftar tanah tidak boleh memasukkan kaveat ke atas tanah miliknya sendiri. Oleh itu, memandangkan defendan gagal untuk membuktikan keadaan di atas dan melampaui kedudukannya sebagai pemilik berdaftar ia diputuskan bahawa defendan tidak berhak untuk mengkaveat kepentingannya sendiri (lihat perenggan 36 & 40).

(3) Defendan dan adik-beradiknya pada kesemua masa pemilik berdaftar bahagian tertentu tanah tersebut tetapi mereka telah memasukkan kaveat-kaveat berkaitan keseluruhan tanah tersebut tanpa menyatakan secara jelas yang ia adalah untuk hanya melindungi kepentingan terhad mereka di dalam tanah tersebut. Defendan oleh itu gagal untuk memenuhi s 174(1) KTS dan kaveat-kaveat tidak dapat kekal di dalam pendaftaran (lihat perenggan 42–47).]

Notes

For cases on caveats, see 8(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 3990–4398.

Cases referred to

Kumpulan Laudiri Sdn Bhd v Tang Kah Ung & 2 Ors [2004] 1 LNS 97, HC (refd)

David Gramong v Rasit Bin Tar [1991] 3 CLJ 2143, HC (refd)

Eu Finance Berhad v Siland Sdn Bhd (M & J Frozen Food Sdn Bhd, Intervener) [1989] 1 MLJ 195, HC (refd)

Fung Yuk Lien v Foong Chee Sam (as administrator of the estate of Kong Mui Tei, deceased) [2000] 3 MLJ 534, HC (refd)

Glamour Green Sdn Bhd v Ambank Bhd & Co & Another Appeal [2007] 3 CLJ 413, CA (refd)

Kumpulan Laudiri Sdn Bhd v Tang Kah Ung & 2 Ors [2004] 1 LNS 97, HC (refd)

Kundang Lakes Country Club Bhd v Garden Master (M) Sdn Bhd [1999] 2 MLJ 537, CA (refd)

Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor [1995] 1 MLJ, CA (refd)

Pembinaan Masdamai Sdn Bhd v Me-Wong Builders Sdn Bhd [1994] 2 MLJ 64, HC (refd)

Robert Sim Teck Hock v Koperasi Wanita Sarawak Bhd & Anor [2001] 5 MLJ 213, HC (refd)

Sharifah Mastura bte Tuanku Ibrahim v Wan Aziz Ibrahim [1993] 3 MLJ 231, HC (refd)

T & TT Enterprise Sdn Bhd v Lembaga Pembangunan dan Lindungan Tanah [2009] 2 MLJ 205 ; [2009] 2 CLJ 160, CA (refd)

Legislation referred to

National Land Code s 323, 323(1)(a)
Sarawak Land Code ss 2, 174, 174(1), 177, 177(1),

Alvin Yong (Chong Brothers Advocates) for the plaintiff.
David Kuok (Wong, Orlando Chua & Kuok Advocates) for the defendant.

Yew Jen Kie J:

INTRODUCTION

[1] There are two applications before this court, namely: (1) Originating Summons No 24–39 of 2010 and (2) Originating Summons No 24–48 of 2010.

[2] In Originating Summons No 24–39 of 2010, the applicant applied for the removal of the caveat instrument No L 1317/2007 registered at the Sarikei Land Registry on 20 April 2007 against all that parcel of land described as Lot 1223, Block 34, Sarikei Land District ('Lot 1223') lodged by Lim Ai Kiong.

[3] In Originating Summons No 24–48 of 2010, the applicant applied for the removal of the caveat instrument No L 206/2010 registered at the Sarikei Land registry on 14 January 2010 against all that parcel of land described as Lot 1223, Block 34, Sarikei Land District ('Lot 1223') lodged by Lim Su Kiong.

[4] Both applications involved the same parcel of land and the affidavits filed by both the defendants are identical. All the facts and issues raised in the two applications are also similar. For this reason, this ruling shall also apply to the Originating Summons No 24–48 of 2010.

BRIEF FACTS

[5] In January 1993 the defendant's late mother Tay Eng Kwee, the defendant's siblings, Lim Su Kian and Lim Su Khong and the defendant had entered into an agreement with the plaintiff to develop their joint lands including Lot 1223 into a housing/commercial estate on barter basis as evidenced by the agreement exhibited as LAK1 ('the development agreement').

[6] The defendant's uncle Lim Kim Khian and his wife Yong Siew Kee @ Yeo Siew Kee are both the directors and shareholders of the plaintiff.

[7] The defendant had granted two power of attorney to the plaintiff both dated 27 January 1993 and registered at the Sarikei Land Registry Office on 20 April 2000 as Instrument No LI 033/2000 and No LI 034.2000 respectively. See Y2 and Y3 respectively.

[8] The approval of the application for amalgamation and subdivision of the lands was obtained on 28 May 1993. The development was allowed to be carried out in seven phases.

[9] The plaintiff had finished phases 1, 2 and 3 land and development plan for phase 4 has been approved by the relevant authority.

[10] By reason of the caveat, the plaintiff was not able to obtain the loan to finance the phase 4 of the development and to commence work thereon.

[11] The plaintiff contended that the defendant does not have caveatable interest on the all undivided right title share and interest in Lot 1223. No action has been filed by the defendant against the plaintiff. The purpose of the caveat is clearly to frustrate the development and to pressure the plaintiff to accede to the requests of the defendant and the defendant's siblings and is an abuse of the process.

LOCUS STANDI

[12] Mr David Kuok, learned counsel for the defendant, contended that since the plaintiff is not the registered proprietor of Lot 1223, unless he can demonstrate that it is such a person having a registered estate or interest in Lot 1223, it cannot avail itself of any right under s 177(1) of the Land Code.

[13] Mr Kuok then contended that the plaintiff has commenced this action on the ground that it is the donee of the power of attorney granted by the defendant. Learned counsel submitted that the power of attorney ie Y2 and Y3 were granted by the defendant to the plaintiff pursuant to the development agreement. The recital to the power of attorney has specifically and expressly included the development agreement as an integral part of the power of attorney. Upon reading the power of attorney and the development agreement together (*Glamour Green Sdn Bhd v Ambank Bhd & Co & Another Appeal* [2007] 3 CLJ 413 (CA)), it clearly shows that the defendant has appointed the plaintiff as the developer to develop various parcels of land including Lot 1223 and the plaintiff agrees to construct at its own costs and expenses the buildings. Upon completion of the defendant's houses in each phase, the plaintiff shall hand over and deliver vacant possession of the houses to the defendant and/or his nominees.

[14] Mr Kuok submitted that upon the conjunctive construction of the power of attorney and the development agreement, it is clear that a contractual relationship between the plaintiff and the defendant is that of a joint venture agreement whereby the plaintiff developed the defendant's lands on barter basis. It is not a relation of principal and agent, citing *T & TT Enterprise Sdn Bhd v Lembaga Pembangunan dan Lindungan Tanah* [2009] 2 MLJ 205; [2009] 2 CLJ 160.

[15] Mr Kuok next submitted that the power of attorney was strictly granted for the joint venture between the plaintiff and the defendant for the plaintiff to carry out the development agreement. However, the development agreement had expired on 28 May 2005 and the defendant had on four separate occasions ie 15 June 2005, 13 august 2005, 17 December 2005 and 14 March 2006 instructed his solicitors to inform the plaintiff that he had no intention to renew the agreement concerned.

[16] It was submitted that since the development agreement has come to an end on 28 May 2005 and the power of attorney which were created for the sole purpose of executing the development agreement would have been extinguished following the expiry of the development agreement in respect of the new and undeveloped defendant's lands including Lot 1223.

[17] Mr Kuok also contended that if the plaintiff feels that the defendant has wrongfully terminated the development agreement on 28 May 2005, its remedy lies in an action for loss and damage, and not to force the defendant to remove the caveat in order to allow it to deal freely with the lands despite the express disagreement of the defendant.

[18] Section 177 of the Land Code states:

> (1) Any registered proprietor or any other person having a registered estate or interest in the estate or interest against which a caveat has been lodged may at any time, if he thinks fit, apply to the High Court for an order that the caveats be removed.
>
> (2) …

[19] It therefore follows that the person initiating a proceeding under s 177(1) must show that he is 'a registered proprietor or any other person having a registered estate or interest' in land which has been caveated. Unless the person can so prove, his legal standing in employing this provision will be challenged as lacking in locus standi.

[20] The plaintiff is relying on the development agreement and the power of attorney granted to it by the defendant pursuant to the development agreement to initiate the proceeding under s 177. As to whether the power of attorney gives standing to the plaintiff to do so will depend on the interpretation of the words 'registered interest' in s 177(1) of the Land Code.

[21] The defendant relied on *Pembinaan Masdamai Sdn Bhd v Me-Wong Builders Sdn Bhd* [1994] 2 MLJ 64, *Robert Sim Teck Hock v Koperasi Wanita*

Sarawak Bhd & Anor [2001] 5 MLJ 213, to support his contention that the plaintiff has no locus standi to make the present application under s 177(1) of the Land Code.

[22] On the other hand, the plaintiff relied on *David Gramong v Rasit Bin Tar* [1991] 3 CLJ 2143 and *Kumpulan Laudiri Sdn Bhd v Tang Kah Ung & 2 Ors* [2004] 1 LNS 97 (HC).

[23] It will be seen from the authorities cited by the defendant that the court has adopted a strict interpretation whereas the judges in the cases cited by the plaintiff have adopted a more liberal approach on their interpretation of 'registered interest' in s 177 of the Land Code.

[24] In *Pembinaan Masdamai Sdn Bhd*, the main issue was the effect of the endorsement of the power of attorney on the sub-divided issue document of title. The defendant contended that the plaintiff had no locus standi to commence the action as it was not within the category of persons specified under s 177(1) of the Land Code. It was held:

> A power of attorney would not give an interest in land. To say that the word 'interests' in s 45(3) is wide enough to cover a power of attorney would not be consonant with the usual status accorded to a power of attorney. Therefore, the purported enforcement of the power of attorney on the sub-divided issue document of title was of no consequence as it is not provided for by the Code or under any written law currently in force in Sarawak. Accordingly, the plaintiff had not met the requirement of s 177(1) of the Code and had no locus standi to commence this proceedings.

[25] In *Robert Sim Teck Hock,* Unibor (the holder of the power of attorney given by the first defendant) objected to the caveats being allowed to remain on the register, Sulaiman Daud JC (as he then was), held that an attorney does not give an interest in land and is not a registered instrument conferring an estate or interest. Thus, Unibor had no locus standi to apply for a removal of caveats.

[26] In *David Gramong*, the respondent was the registered proprietor of certain land which he sold to the applicant for $260,000. The applicant failed to pay the balance within the stipulated time. There was also an agreement between the applicant and the respondent whereby the applicant had to construct 250 double-storey concrete terrace houses for the respondent. The agreement granted the applicant a power of attorney empowering him with 'full power' to develop and to deal with the land. Time was the essence of the agreement. One parcel of land was charged by the applicant to a bank. In view of the applicant's failure to pay the balance of the purchase price at the

stipulated time and fearing that the applicant would create further charge on the land the respondent lodged the caveats.

[27] Justice Chong Siew Fai (as he then was) upon observation that the word 'interest' is not defined in s 2 of the Land Code, went on to say:

> In the instant case, the applicant is not merely a purchaser under contract but someone armed with a duly registered valid power of attorney conferring upon him wide range of powers including power to effect dealings (as defined in s 2 of the Land Code) and to commence prosecute or enforce actions or legal proceedings relating to any matters in connection with the said lands. In my opinion the words 'registered interest' include a right, power or privilege validly granted over or in connection with land, at least for the purpose of the said s 177 (1) and are broad enough to enable the applicant to make the present application.

[28] David Gramong's case was followed by *Kumpulan Laudiri Sdn Bhd v Tang Kah Ung & 2 Ors* [2004] 1 LNS 97 (HC). In the latter case, the plaintiff claimed over 73% of the properties built on the land and the plaintiff's has an absolute right to sell these properties. The Court held that by the power of attorney which granted the plaintiff entitlement to absolutely claim possession of and interest concerning the plaintiff's sublots, coupled with the power to execute memorandam of transfers in respect of these sublots had locus standi under s 177(1) of the Land Code.

[29] As stated earlier the plaintiff's locus standi is premised on the development agreement and the power of attorney. Reading these two documents together, it is clear that the defendant has given wide power to the plaintiff to carry out the development of Lot 1223.

[30] Clause 16 of development agreement states that the owners shall execute in conjunction with the development agreement a power of attorney appointing the developer as their lawful attorney to do, amongst others, to mortgage charge or raise a bridging loan from a reputable bank or financial institution on the security of the land and to enter into agreement for the sale of the developers' sublots and to transfer the same to respective purchasers thereof.

[31] Clause 9 of the development agreement (page 5 of exh Yl in both originating summons) allows the plaintiff to charge the lands for a bridging loan. The power of attorney (exh Y2) clearly states that the donors of the power of attorney including the defendant accepted the offer of the plaintiff and agreed to allow the plaintiff to develop the land.

[32] The power of attorney also allows the plaintiff 'to sell and dispose of oil the sublots which under the development agreement are to be transferred to the Developer for such price as the attorney shall deem fit'

[33] Clause 12(11) of the power of attorney also empowers the plaintiff to do every other act matter or thing which may be or which may by our attorney be deemed to be necessary or proper in relation to the premise.

[34] The plaintiff as developer has been granted wide power by the defendant to deal with the land including to 'do eyery other act matter or thing which may be or which may by our Attorney be deemed to be necessary or proper in relation to the premises' and has practically stepped into the shoes of the defendant. Adopting the generous interpretation given by Justice Chong Siew Fai in *David Gramong*'s case, I am of the view that the plaintiff is the person who has registered interest for whom s 177 intended. Thus, it has the standing to bring this application under s 177(1) to remove the caveats.

WHETHER THE DEFENDANT HAS CAVEATABLE INTEREST?

[35] It must be borne in mind that the foremost issue which the court must address in cases relating to caveats is whether the caveator has caveatable interest for the caveats to subsist (see *Kundang Lakes Country Club Bhd v Garden Master (M) Sdn Bhd* [1999] 2 MLJ 537 (CA)).

[36] It is the general rule that a registered proprietor of land cannot lodge caveats on his own land. The rationale for this is explained in *Eu Finance Berhad v Siland Sdn Bhd (M & J Frozen Food Sdn Bhd, Intervener)* [1989] 1 MLJ 195, in which *Siland* as the owner of the land argued that by virtue of that status alone it acquired the right to enter and maintain the caveat because of the words of the first limb of s 323(1)(a) of the National Land Code. LC Vohrah J (as he then was) held:

> A person who relies on his status os registered owner must necessarily be a person already possessing title or interest in the land and not merely a person excluded by the language of s 323(1), for he is not 'claiming' title to the land title is already his.

[37] Accordingly, the court held:

> As Siland has founded its right to caveats solely on its status as the registered owner of the said land, Siland merely as registered owner was not entitled to caveat its own interest. An order in terms of the application was granted in that the caveats lodged by Siland be removed forthwith by the Registrar of Titles (see also *Saw Cheng Boon v Mohd Farook bin Shaik Mohaidin* [1995] 3 AMR 2253).

[38] In my opinion, the decision in *Eu Finance* in relation to s 323 of the National Land Code is equally applicable to the provisions regulating caveats in Sarawak.

[39] However, there is exception to this general rule. That exception is that a registered owner must show a distinct interest in the land other than that he is the registered owner. In *Sharifah Mastura bte Tuanku Ibrahim v Wan Aziz Ibrahim* [1993] 3 MLJ 231, Abdul Kadir Sulaiman J (as he then was) held:

> A registered proprietor of land was not entitled to enter a private caveat in respect of his own land unless he could show some circumstances which affirmatively gave rise to a distinct interest in the land other than the fact that he was the registered proprietor of the property. The onus was on the registered proprietor/caveator to satisfy the court. that he has a caveatable interest within the exception.

[40] A perusal of the statutory declaration filed by both defendants in support of the caveat, particularly para 15 of exh Y11 in OS No 24–39 of 2010 and para 17 of exh Y9 in OS No 24–48 of 2010, which are pari material, stated that the purpose of the statutory declaration is to support the lodgement of a caveat on the land in order to protect their respective rights, shares and beneficial interest in the land according to the development agreement and to prevent the registration of any further adverse dealing of the land by the plaintiff without their knowledge and consent.

[41] In the premise, I would agree with Mr Yong who submitted that the caveats filed herein by both the defendants are based on proprietary rights and contractual rights under the development agreement. As the defendants failed to establish a set of circumstances above and beyond their status as registered proprietors, I, on the authority of *Sharifah Mastura Bte Tuanku Ibrahim*, hold that the defendants are not entitled to caveat their own interest.

[42] It is undisputed and admitted fact that both defendants are the registered proprietors of 1/9 of Lot 1223. In the affidavit of both the defendants, they claim to own 8.30% of the lands and 2.24% of the proportion of each type of subdivided lots of each phase under the development agreement.

[43] Section 174 of the Land Code states:

> 174(1) Ever/ caveat shall be signed by the caveator, or by his attorney or agent, and shall state with sufficient certainty the nature of the estate or interest claimed by the caveator and how it is derived from the proprietor. It shall also appoint a place, or give an address, within Sarawak at or to which notices and proceedings relating to the caveats may be served or addressed.

[44] It is evident from the statutory declarations is support of the caveats filed by both the defendants that they lodged the caveats in respect of the whole of the land without expressly stating that it was to protect their limited interest in the land only.

[45] Mr Yong submitted that in view of the aforesaid, the caveats lodged by the defendants suffer from a defect which renders the caveats defective and invalid and null and void.

[46] To support his contention, he cited *Fung Yuk Lien v Foong Chee Sam (as administrator of the estate of Kong Mui Tei, deceased)* [2000] 3 MLJ 534 (HC). In this case the defendant caveated the whole of the land without expressly stating that it was to protect her limited interest in the land only. Tee Ah Sing J (as he then was) held that the non-compliance with the mandatory provision in s 174(1) has rendered the defendant's entry of caveat against the whole of the land null and void and of no effect and the court has no power to allow a defective or invalid caveat to remain. He therefore ordered that the caveat lodged by the defendant to be removed from the register.

[47] Having regard to the fact that the defendants have also failed to comply with s 174(1) of the Land Code in failing to specify the portion of the Land they wish to protect, I hold that the caveats cannot remain in the register.

[48] Having regard to all the reasons aforesaid, I feel compelled to find that the defendants have failed to show that they have caveatable interest for the caveats to subsist. Accordingly, the proper order for me to make is for the caveats to be removed forthwith without having to consider the three stages set out in *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ. I do hereby order in terms of relief (i) and (iii) of the originating summons.

INJUNCTIVE RELIEF

[49] Mr Yong submitted that an examination of the caveats and the affidavit would show that the defendants (who are brothers) have taken turn to lodge caveats to disrupt the plaintiff to proceed with the development under the development agreement. The caveat in OS No 24–39 of 2010 was lodged in 2007 while the caveat in OS No 24–48 of 2010 was lodged in 2010. The defendants have deposed that their other siblings also have shares in the land. It was submitted that it is therefore not unforeseeable for the plaintiff to seek injunction at this juncture to stop further caveats being lodged in view of the acts of the defendant.

[50] I would agree with Mr Yong on this. Hence, I order in terms of relief (ii).

COSTS

[51] Order in terms of relief (v) of the originating summons.

Order for removal of caveats granted with costs.

Reported by Kohila Nesan